

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
CIVIL NO.: 24-774 (DSD/TNL)

Acella Pharmaceuticals, LLC,

Plaintiff/Counterclaim Defendant,

v.

ORDER

ANI Pharmaceuticals, Inc.,

Defendant/Counterclaim Plaintiff.

This matter is before the court upon the motion to dismiss counterclaims by plaintiff and counterclaim defendant Acella Pharmaceuticals, LLC. Based on a review of the file, record, and proceedings herein, and for the following reasons, the motion is denied.

This false advertising dispute arises from Acella's and defendant and counterclaim plaintiff ANI Pharmaceuticals, Inc.'s marketing and manufacturing of competing thyroid medications. Acella commenced this action in March 2024, alleging that ANI violated the Lanham Act, 15 U.S.C. § 1125(a), and various Minnesota statutes, by falsely representing that its product is a viable generic alternative to Acella's product, NP Thyroid®. See Compl. ¶¶ 39-66. In response, ANI filed counterclaims alleging that Acella also violated the Lanham Act, the common law, various Minnesota consumer protection statutes, and the Georgia Uniform Deceptive Trade Practices Act. ANI specially claims that Acella

falsely represented that NP Thyroid® is superior to ANI's product, that ANI's product is not a suitable substitute for NP Thyroid®, and that NP Thyroid® is the generic equivalent to another product on the market. See Answer and Counterclaims at 43-68. Acella now moves to dismiss the counterclaims. In so doing, Acella has provided the court with various lengthy exhibits and links to third-party websites. See ECF Nos. 36, 51. In addition, the parties rely on numerous exhibits attached to the counterclaims. See ECF No. 24. Although the court may consider documents "embraced by the pleadings" on a motion to dismiss, Porous Media Corp. v. Pall Corp., 186 F.3d 1077, 1079 (8th Cir. 1999), here there are simply too many facts contained in the exhibits to render this an appropriate case for dismissal under Rule 12(b)(6). As a result, and after a thorough review of the papers, including the exhibits, the court finds that ANI has plausibly alleged its counterclaims.

Accordingly, based on above, **IT IS HEREBY ORDERED** that the motion to dismiss counterclaims [ECF No. 50] is denied.

Dated: December 18, 2024

s/David S. Doty
David S. Doty, Judge
United States District Court